

REMARKS

Applicants thank the Examiner for the careful consideration of this application. Claims 1-42 are currently pending. Claims 1, 7, 13, 21, 31, 32, and 38 have been amended. Claims 40-42 have been withdrawn from consideration. Based on the foregoing amendments and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Objections to the Drawings

The Office Action objected to the drawings for allegedly failing to show the “angle claimed in claim 6 and the longitudinal channel being parallel to the axis as claimed in claims 7 and 38.” FIG. 4 of the application and the accompanying description have been amended to show and describe axis 30 and the angle α recited in claim 6. Claims 7 and 38 (as well as 31) have been amended to recite that “each of said longitudinally extending channels is substantially co-planar with said axis” in order to better describe the claimed structure, which is shown at least in FIGS. 3 and 4 of the application. In view of the above, the Applicants respectfully request withdrawal of these objections.

Rejections under 35 U.S.C. § 112

Claims 7 and 8 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the enablement requirement. (Applicants believe the Examiner intended to reject claims 7 and 38, not claims 7 and 8, and will address the rejection accordingly.) The Examiner asserted that the claimed relationship is not shown in the figures. As discussed above, claims 7 and 38 (as well as 31) have been amended to recite that “each of said longitudinally extending

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channels is substantially co-planar with said axis,” which is shown at least in FIGS. 3 and 4 of the application, as filed.

Claims 32 and 33-36 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner indicated that the “hourglass shaped common surface of revolution” in claim 32 is a double inclusion of that set forth in claim 1. Claim 32 has been amended to depend from claim 31, thereby overcoming this rejection.

For the above reasons, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 112.

Rejections under 35 U.S.C. § 102

Claims 1-39 stand rejected under 35 U.S.C. § 102(f) and (g) because the applicant allegedly did not invent the claimed subject matter. The Examiner alleges that the declaration filed by Timothy Axe leaves the question of inventorship open and unresolved. The Examiner further alleges that Qiuchen Zhang is not in fact an inventor. The Applicants respectfully traverse this rejection.

First, the Examiner’s attention is respectfully directed to the inventor Declaration filed with this application. The Declaration lists all three named inventors and was signed by each of them, including Timothy Axe, on September 12, 2003. The parties executing a declaration under 37 C.F.R. § 1.63 are presumed to be the inventors. *See Driscoll v. Cebalo*, 5 U.S.P.Q.2d 1477, 1481 (Bd. Pat. Inter. 1982); M.P.E.P. § 2137.01.

Furthermore, according to M.P.E.P. § 706.02(g), the Examiner must presume the applicants are the proper inventors unless there is proof that another made the invention and that

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the applicants derived the invention from the true inventor. The declaration filed by Timothy Axe does not constitute *proof* that another made the invention and that the applicants derived the invention from the true inventor. Rather, Timothy Axe's declaration merely contains unsupported allegations.

Moreover, an independent investigation by Applicants' previous counsel, Robert C. Collins, confirms that the present inventorship in this application is correct. The Examiner's attention is respectfully directed to the Supplemental Information Disclosure Statement (Supplemental IDS) filed in this application on September 15, 2004, by Mr. Collins. On page 4 of the Supplemental IDS, Mr. Collins, a registered U.S. patent attorney, stated that:

After a review of the situation, including interviews with the three named inventors and other persons employed by the assignee of the present application and involved with the development of the subject container design, and a review of the documentation available on the design development, it has been determined that there is insufficient information to warrant a change in the persons identified as inventors – i.e., that Messrs. Axe, Zhang and Simpson should continue to be named as joint inventors in the present application.

Based on Mr. Collin's review and examination of the situation, the Applicants respectfully submit that there is no open question as to inventorship, and that the present inventorship in this application is correct. Therefore, the Applicants respectfully request that the rejections under 35 U.S.C. § 102(f) and (g) be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 21, 23, 31, and 37-39 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,274,548 to Schneider. Claims 21 and 31 are the independent claims.

Claims 21 and 31 have both been amended to recite a “squeezable” container that includes a sidewall “adapted to be squeezed radially inwardly.” The application explains at the top of page 8 that, “[t]o dispense product from the container, container sidewall 20 or 42 is gripped by a user, and is deformed or squeezed radially inwardly to increase the pressure within the container and thereby dispense product through the dispensing closure. Container sidewall 20 or 42 in accordance with the present invention is specifically contoured to be extremely squeezable for maximizing the dispensing of liquid from the container.”

Schneider does not disclose or suggest a squeezable container including a sidewall adapted to be squeezed radially inwardly. Rather, Schneider is directed to large capacity plastic tanks 10 having reinforcements in the side walls 11 and 12 that stiffen the tank 10 and prevent excessive bulging of the side walls 11 and 12 under the pressure of the fluid contents. (*See, e.g.*, Schneider at 4:40-46.) Applicants submit that the reinforcements in the side walls 11 and 12 of Schneider would *resist* radially inwardly squeezing of the sidewall, not provide for it as claimed by claims 21 and 31. Furthermore, there is no motivation or suggestion in the art to make the large capacity plastic container of Schneider squeezable. Accordingly, the Applicants submit that claims 21 and 31, and their respective dependent claims, are patentable over Schneider.

Claims 21-31 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent Application Publication No. 2001/0008593 to Tsuji et al. Claims 21 and 31 are the independent claims. As discussed above, claims 21 and 31 have been amended to recite a “squeezable” container that includes a sidewall “adapted to be squeezed radially inwardly.” Tsuji does not disclose or suggest such a container. Rather, Tsuji is directed to a toner storing container for use

in an image forming apparatus, such as a copying machine or a printer. (*See, e.g.*, Tsuji at ¶ 0001.) Nowhere does Tsuji disclose or suggest that the toner storing container 13 is “squeezable” or includes a sidewall “adapted to be squeezed radially inwardly.” Thus, the Applicants submit that claims 21 and 31, and their respective dependent claims, are patentable over Tsuji.

Claims 21, 23, 31, and 37 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,790,361 to Jones et al. Claims 21 and 31 are the independent claims. Claims 21 and 31, as amended, recite a sidewall “adapted to be squeezed radially inwardly.” Jones does not disclose or suggest a sidewall adapted to be squeezed *radially* inwardly. Rather, the sidewall of Jones is adapted to be collapsed *axially* after the contents are removed. (*See, e.g.*, Jones at 4:38-40; Fig. 4A.) Furthermore, the ridges 22 and grooves 24 in the sidewall of Jones are formed as substantially uninterrupted rings (*see* Jones at FIG. 2), which will tend to *resist* radially inward squeezing of the sidewall, not provide for it, as claimed. Therefore, the Applicants submit that claims 21 and 31, and their respective dependent claims, are patentable over Jones.

Claims 1-5, 9, 10, 13-18, 24-28, and 32-36 stand rejected as being obvious over the references as applied to claims 21 and 31 above (*i.e.*, Schneider, Tsuji, and Jones) and further in view of U.S. Patent Application Publication No. 2003/0121881 to Higuchi. Claims 1 and 13 are the independent claims. The remaining claims depend from independent claim 1, 13, 21, or 31. Claims 1, 13, 21, and 31 are all directed to a “squeezable” container or container sidewall in which the “sidewall [is] adapted to be squeezed radially inwardly.” As demonstrated above, neither Schneider, Tsuji, nor Jones discloses or suggests such an arrangement. In addition,

Higuchi does not provide the missing disclosure.

Like the Jones reference, discussed above, Higuchi does not disclose or suggest a sidewall adapted to be squeezed *radially* inwardly. Rather, the sidewall of Higuchi is adapted to be compressed *longitudinally* (*i.e.*, axially) after its contents are consumed. (*See, e.g.*, Higuchi at ¶ 0002.) In addition, each of the folds 6, 7, 8, 9 of the sidewall 2 has a substantially uninterrupted circumferential shape (*see* FIGS. 3-6), which will tend to *resist* radially inward squeezing of the sidewall, not provide for it, as claimed. Therefore, Higuchi does not remedy the deficiencies of Schneider, Tsuji, and Jones. Accordingly, the Applicants submit that independent claims 1, 13, 21, and 31, as well as their dependent claims, are patentable over any combination of Schneider, Tsuji, Jones, and Higuchi.

Claims 12 and 30 stand rejected under 35 U.S.C. § 103(a) as being obvious over the references as applied to claims 21 and 31, above, and further in view of U.S. Patent No. 6,112,925 to Nahill et al. Claim 12 depends from independent claim 1, and claim 30 depends from independent claim 21. As demonstrated above, independent claims 1 and 21 are patentable over the cited references. Particularly, none of the cited references discloses or suggests a sidewall adapted to be squeezed radially inwardly, as claimed. Nahill does not provide the missing disclosure. Accordingly, the Applicants submit that independent claims 1 and 21, as well as their dependent claims, are patentable over any combination of the cited references.

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Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants, therefore, respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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Enclosure:
- Replacement Drawing Sheet 2 of 4

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AMENDMENTS TO THE DRAWINGS

Please replace current drawing sheet 2 of 4, containing FIG. 4, with the enclosed replacement drawing sheet 2 of 4, containing amended FIG. 4. FIG. 4 has been amended to show the axis 30, and the angle α of the longitudinal channel 26f with respect to the axis 30.